defeat a testator's disposition of his property. It was to this end, of course, that section 3721 of the Virginia Code was originally enacted, making the fraudulent destruction or concealment of any will or codicil, with intent to prevent the probate thereof, a felony. The difficulty, however, lies in the proof. A son of a testator, who has access to a will leaving a considerable portion of the estate to others, has only to burn it in order to receive his share as the heir of an intestate parent. A conviction, where the most ordinary precautions of the criminal are employed, would be improbable. The motive would be clear enough. The difficulty would lie in establishing, by the strict rules of criminal evidence, the *corpus delicti*, the fact that there once had been a will, and, that proved, that testator had not himself destroyed it; for, as we have seen in *Appling* v. *Eades*,[1] the presumption, in the absence of other proof, is that testator himself destroyed it.

GEORGE BRYAN.

Richmond, Va.

PARTNERSHIP ASSOCIATIONS IN VIRGINIA.

There was an Act passed by our General Assembly at the session of 1874–5 entitled "An Act to authorize the formation of Partnership Associations in which the capital subscribed shall alone be responsible for the debts of such association, except under certain circumstances." This Act is now contained in sections 2878 *et seq.* of the Virginia Code of 1887. It is the purpose of this paper to point out certain defects in this statute and to suggest the remedies.

The statute was adopted, with but slight modifications, from the laws of Pennsylvania, where it was enacted in 1874. In that State, associations of this kind are quite common, and the law that applies to them has been satifactorily developed by the legislature and settled by judicial decisions; but our statute has never been amended, and seems never to have been construed by our Supreme Court. This may be accounted for by the fact that partnership associations have never been numerous in Virginia. They are to be found, however, in some sections of the State. In the interest of these, and also from a desire that the law may be improved for the benefit of any who may hereaf-

[1] *Supra.*

ter prefer to do business under this form of organization, the following changes and additions are suggested:

1. *Subscriptions to capital:*

It is provided in the Virginia statute that in the formation of a partnership association a statement shall be recorded setting forth, among other things, the total amount of capital of the association, when and how to be paid, and the amount subscribed by each member.[1] It has been held, under identical language, that the subscription must be paid in *cash*, or at least by a check or note that is converted into cash.

This should be amended so as to allow the subscription to be paid *either in money or in property, real or personal, at a valuation* to be fixed by the members. This change was made in Pennsylvania as early as 1876, where it is provided that in the statement required to be recorded, subscriptions to the capital, 'whether in cash or property,' shall be certified in this respect according to the fact; and when property has been contributed as part of the capital, a schedule containing the names of the parties so contributing, with a description and valuation of the property so contributed, shall be inserted. It was held that this requirement was not complied with by filing a general description and lumping valuation of the property contributed, but that the description and valuation must be specific enough to enable creditors to ascertain precisely of what the property consisted, and to form a correct estimate of its value.

The court said:

"It will be noticed that the Act gives a wide latitude as to the kind of property that may be contributed as capital. At the same time it is very evident that it contemplates a real actual capital in cash, or in property available for the business of the company and the payment of its debts. It was never intended that the property contributed as capital should be moonshine, wild lands, or water lots."[2]

2. *Suits by and against such associations:*

How should partnership associations sue and be sued in Virginia? In practice it is believed that they sue in the association name like corporations, but there is no authority for this, unless the power is granted in the statute. It is not expressly granted, but perhaps it is implied in section 2881, which determines how the liability of a member shall be ascertained and enforced. There it is provided that—

[1] Code, section 2878.

[2] Vanhorne *v.* Corcoran (Pa.), 4 L. R. A. 386.

"If an execution against the association shall have been returned unsatisfied, application may be made to the court in which the judgment or decree was rendered, and . . . . if it appear that any part of the capital stock subscribed by a member of the association remains unpaid, the court *may enter a judgment or decree against such member* to the extent of such unpaid subscription; but no proceeding shall be taken against any member under this section unless and until *he shall have had ten days previous notice* of the application."

Is it not the partnership association, the *artificial* person (and not the *individual* members thereof), that is, in the first instance, immediately before the court? And this being conceded, the liability to *be sued* in the association name may reasonably be said to carry with it the power to *sue* in like manner. The defendant association by filing a plea of set-off would be entitled, under our practice, to be put on the footing of a plaintiff, which shows that in the mind of the legislature the one is implied in the other. In Pennsylvania an act was passed conferring this power before this question was raised.

It is manifest that the liability to *be sued* in the association name is highly important for the protection of the public who deal with these associations; for if they must be sued as individuals, the summons would have to be served on all the members residing in this State, however numerous or scattered they might be, in order to bind them all. And if it be maintained that the liability to be sued in the association name is already provided for in the statute, no provision is made for the *service of process* on these associations. This uncertainty should therefore be removed by an act expressly providing that the partnership association *shall sue and be sued only in the association name;* and that when suit is brought against any such association, *service of process shall be made upon the president, secretary, or treasurer thereof, which service shall be as complete and effective as if made upon each and every member of the association.*

3. *Power to hold real estate:*

The remaining suggestion relates to the power to take, hold, and convey real estate. Our statute contains no provision empowering these associations to hold real estate in the association name. Yet it is evident that companies like these, organized for the purpose of carrying on mercantile or other business, have occasion to purchase lots on which to erect their stores and warehouses, and in some cases to mortgage them; but as the law now stands, all the members must unite in the deed, which is often inconvenient, or else resort must be had to roundabout and unbusinesslike expedients in order to accomplish the

purpose. It should therefore be enacted that *all real estate purchased by any partnership association shall be held, and conveyance thereof shall be made, in the association name;* and that such association shall have the right *to adopt and use a common seal, and to acknowledge their deeds or other writings by their president and secretary.*

4. *The partnership association contrasted with a corporation:*

In view of the great facility with which charters may now be obtained from the courts, some reasons may be demanded for granting certain corporate powers to partnership associations; though it may fairly be contended that, inasmuch as an act has been passed providing for the organization of partnership associations with limited liability, and prescribing rules for the conduct of the partnership business, closely analogous to those of corporations, under which provisions some companies have been formed, there is an obligation upon the State to confer such additional powers as may be necessary to render the conduct of the partnership business safe and practicable, provided it can be done without injury to other interests. But I believe an examination of the nature and powers of the full-fledged partnership association will show that it differs from a corporation in several important points, and has a legitimate place in the business of our people.

The most notable difference between the partnership association and the corporation is found in the retention in the former, under a modified form, of the *delectus personarum* of the ordinary partnership. It is provided[1] that—

"The capital stock of the association, and all profits and dividends accruing therefrom, shall be deemed personal estate and may be transferred under such rules and regulations as the association may prescribe; but no transferee, assignee, or representative of any decedent, insolvent, or bankrupt, or other persons, shall be entitled to participate in the business of the association, unless he be elected thereto by a majority of the members in number and interest. Such transferee, assignee, or representative shall, however, be entitled to hold the interests so acquired, and all profits and dividends accruing therefrom, until the purchase thereof by the association."

The general rule as to corporations is that ownership of stock carries with it the rights of membership in the corporate body. But in the partnership association the purchaser of stock can have no voice in the conduct of the business unless he is acceptable to a majority of the members in number and value of their interests. The reason for the *delectus personarum*, as it exists in ordinary partnerships, is found in

[1] Code, section 2882.

the right of each partner to act as agent for all the others, the liability of each for the partnership obligations, and the right of each to contribution or subrogation as against the others. As none of these characteristics are found in the partnership association, there must be some other reason for the peculiar form of the *delectus personarum* so carefully guarded in the provisions just referred to. As was said in a recent well considered case in Pennsylvania [1]—

"Looking at the general scheme of the act, it seems apparent that it was intended to enable persons desiring to combine their capital in any business enterprise to do so without incurring, on the one hand, the general liability of partners, or, on the other, the risk of having the business taken out of the control of those in whom it was originally placed without their consent, which exists in ordinary corporations."

The facts of the case just cited will show that by reason of the right to exclude an objectionable transferee from participating in the association business, it is *more difficult to consolidate these companies into trusts* than it is in the case of corporations; and for that reason they should be favored on the ground of public policy. In the case referred to, one member of the Producers' Oil Company, L't'd, purchased a majority of the shares of its stock with the avowed purpose of obtaining control of the company, and changing its policy from what he characterized as "gad-fly" competition with the Standard Oil Trust, to such competition as he believed would be unobjectionable to it. The other members refused to elect him to membership in the association with respect to the shares so purchased, and in this action they were sustained by the court.

A further distinction is found in the fact that a law providing that partnership associations may sue in the association name has been held to have no extraterritorial force or effect, and that a partnership association organized under the laws of a foreign state must sue and be sued in the names of the individual members.[2] In a recent case in the United States Supreme Court [3] it was held that such an association was *not a "citizen"* within the meaning of the clause of the constitution that confers upon the federal courts the jurisdiction of suits between citizens of different States. This policy would tend to confine these companies to local or domestic enterprises, which is probably the sphere for which they were intended.

[1] Carter *v.* Producers Oil Co. (Pa.) 39 L. R. A. 100.

[2] Edwards *v.* Warren Linoline and Gasoline Works, (Mass.) 38 L. R. A. 791.

[3] Great Southern etc. Hotel Co. *v.* Jones, 177 U. S. 449. See also Imperial Refining Co. *v.* Wyman, 38 Fed. 574, 3 L. R. A. 503.

In addition to the cases cited, others in the foot-note[1] may be consulted for the law of partnership associations.

GORDON PAXTON.

Norfolk, Va.

THE GRADUATING EXAMINATION IN THE LAW SCHOOL.*

Let me express at the very outset my profound sense of the honor done me in inviting me to address this illustrious body of men, banded together, not for their own advantage, but for the cause of legal education and for the benefit of the youths of our land, who yearly congregate at our institutions of learning, to drink deeply there of that great well-spring of justice and morals—the Common Law.

In the expansion of that great system of jurisprudence to meet the needs of every business, every country and every clime, the judge, the practitioner and the teacher of the law, each takes a part, and neither plays an inferior rôle. It were an invidious task to institute a comparison between the service rendered by each of these in perfecting that system which now commands the enlightened admiration of the world. Rather let us turn our thoughts to a consideration of the ways and means whereby the teacher may increase his usefulness to his profession and to his country.

This honorable body has already in many directions rendered incalculable aid to the cause of legal education. In every law school the effect of your efforts is seen in the lengthening and expansion of courses, in higher standards of attainment, and in all the various ways suggested by an intelligent comparison of methods and results.

Everywhere the law school is now alive to the dignity and importance of its functions. It is exacting of the student good honest work in the class-room. It is requiring him in his preparation for the bar to take the time to ponder, reflect and digest, as well as to acquire. In some instances it is requiring, as a preliminary to legal studies, a thorough academic training. It is demanding of the student more original legal

[1] Maloney *v.* Bruce, 94 Pa. 249; Eliot *v.* Himrod, 108 Pa. 569; Briar Hill Coal and Iron Co. *v.* Atlas Works, 146 Pa. 290, 23 Atl. 326; Rouse, Hazard & Co. *v.* Donovan, (Mich.) 27 L. R. A. 577; Rouse, Hazard & Co. *v.* Detroit Cycle Co. (Mich.), 38 L. R. A. 794; Staver & Abbot Mfg. Co. *v.* Blake (Mich.), 38 L. R. A. 798. See also Liverpool Ins. Co. *v.* Oliver, 10 Wall. 566.

*A paper read before the Section of the American Bar Association on Legal Education, at its meeting in Denver, Col., August, 1901, by Professor Raleigh C. Minor, of the University of Virginia.